

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ADAM X., BRIAN Y., CASEY Z., on behalf of
themselves and all others similarly situated, and
the AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY, and THE ARC OF NEW
JERSEY;

Civil Action No. 3:17-cv-00188-FLW-LHG

Plaintiffs,

CONSENT ORDER

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS, MARCUS HICKS, in his
official capacity as Acting Commissioner of the
New Jersey Department of Corrections, NEW
JERSEY DEPARTMENT OF EDUCATION,
and LAMONT REPOLLET, in his official
capacity as Commissioner of the New Jersey
Department of Education,

Defendants.

The Parties and the Court having conferred on the matter of a court-appointed external monitor (“the External Monitor”) in the anticipation of settlement, and having agreed to the External Monitor’s role,

It is on this 20th day of May, 2019

ORDERED that

1. Dr. Susan Roberts shall be the External Monitor in the above captioned matter for the Initial Monitoring Period and for the External Monitoring Term, as described below.

2. Defendants the Department of Corrections (“DOC”) and the Department of Education (“DOE”) shall bear all costs of the External Monitor, which shall be as follows:

- a. A flat fee of \$1500 for each day of on-site monitoring at a DOC facility that lasts longer than 5 hours;

- b. On-site monitoring at a DOC facility that lasts 5 hours or less shall be charged at a rate of \$200/hour;
- c. Consultant fee for reviewing policies, written reports, and the monitoring tool and participation in conferences, whether telephonic or in person, shall be charged at a rate of \$200/hour;
- d. A fee of \$1500 per round trip to New Jersey from Indiana for on-site monitoring;
- e. Travel expenses for airfare, lodging, parking, mileage, and car rental will be reimbursed based on the New Jersey state policy related to state employee travel expenses found at <https://www.state.nj.us/infobank/circular/cir1611.pdf>.

Definitions

3. Corrective Action Plan (“CAP”) is the plan developed by the DOE following the monitoring activities conducted by DOE. The CAP details the required actions to be completed by DOC to address all areas of noncompliance identified in the monitoring report. CAP activities include, but are not limited to, revision of Individualized Education Programs (IEPs), staff training, and development or revision of policies, procedures and practices. All CAP activities will be developed in accordance with N.J.A.C. 6A:14-9.1(e). In accordance with IDEA Section 300.600(e), the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State’s identification of the noncompliance. As agreed upon by all parties, noncompliance identified as a result of initial monitoring activities will be corrected within 6 months of identification.

4. Framework is a document developed by the DOE following completion of monitoring activities. The framework is an overview of the monitoring findings and will include the areas of noncompliance, barriers to compliance, relevant code references, and proposed CAP activities.

Initial Monitoring Period

5. During the Initial Monitoring Period, the External Monitor will conduct the following activities:

- a. Review and provide feedback on the DOE's Monitoring Tool;
- b. Review and provide feedback on the DOC's policies and procedures;;
- c. Participate in site visits with the DOE and address concerns that DOE is not implementing its Monitoring Tool with fidelity and consistency as outlined in section 6, below; and
- d. Review and provide feedback on the Framework.

6. The External Monitor shall participate in approximately 10 site visits, or more if required, occurring between September 1, 2019 and October 31, 2019, in coordination with the DOE, the DOC, and counsel for Plaintiffs. The External Monitor shall utilize the following protocol if she observes or believes that the DOE is not complying with its Monitoring Tool:

- a. If the External Monitor chooses to formally express her belief that DOE is not implementing its Monitoring Tool with fidelity and consistency, the External Monitor shall email the DOE, with a copy to counsel for Plaintiffs and Defendants, within 24 hours of her observation, stating the basis for her belief and proposed solution. The DOE shall respond within 72 hours of receipt of the External Monitor's email. If the DOE agrees with the External Monitor's observation and proposed solution, such solution shall be implemented. If the DOE disagrees with

the External Monitor's email observation and proposed solution, it shall state the basis for the disagreement and a conference call with all counsel shall be conducted within 72 hours.

- b. If the External Monitor chooses to informally address express her belief that DOE is not implementing the tool with fidelity and consistency, she shall engage with the DOE monitors directly during the site visit. If she believes the results of this process are inadequate, she can express her belief formally, as outlined in 6(a).

7. The DOE shall produce the Framework by November 15, 2019 to the Parties and the External Monitor.

8. The External Monitor shall review and submit written comments to all parties on the Framework by December 2, 2019.

9. The Parties and the External Monitor shall meet in person to discuss the Framework on or before December 13, 2019, and again during the week of January 13, 2020.

10. The DOE shall produce a final CAP to the Parties, the External Monitor, and the Court by no later than January 31, 2020. The CAP will be jointly filed by the Parties on the public docket.

External Monitoring Term

11. If the parties do not settle this matter, as anticipated, the External Monitor's role shall cease upon either or both parties determination that settlement negotiations have reached an impasse and she will be paid for all time expended up until that date.

- a. The External Monitor will be notified within 24 hours of this determination in writing, with a copy to all parties.

12. In the event that the Parties resolve this action through a settlement, the External Monitor will perform any additional monitoring duties pursuant to the terms of the settlement agreement.

BY THE COURT:

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief Judge